

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Pub. L. 95-608, title III, §301, Nov. 8, 1978, 92 Stat. 3077.)

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 95-608, title III, §302, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1961. Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Pub. L. 95-608, title IV, §401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

“Department of Health and Human Services” substituted for “Department of Health, Education, and

Welfare” in subsec. (b), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

(Pub. L. 95-608, title IV, §402, Nov. 8, 1978, 92 Stat. 3078.)

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(Pub. L. 95-608, title IV, §403, Nov. 8, 1978, 92 Stat. 3078.)

CHAPTER 22—BUREAU OF INDIAN AFFAIRS PROGRAMS

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| Sec.
2001. | Standards for basic education of Indian children in Bureau of Indian Affairs schools. <ul style="list-style-type: none"> (a) Purpose. (b) Studies and surveys. (c) Revision of minimum academic standards. (d) Alternative or modified standards. (e) Waiver of standards. (f) Implementation of standards. (g) Annual plan for meeting of standards. (h) Closure or consolidation of schools. (i) Authorization of appropriations. (j) Alcohol and substance abuse prevention and treatment. (k) “Tribal governing body” defined. (l) Application for contracts or grants for non-Bureau funded schools or expansion of Bureau funded schools. |
| 2002. | National criteria for dormitory situations. <ul style="list-style-type: none"> (a) Study of costs. (b) Distribution and publication of criteria. (c) Implementation. (d) Waiver. (e) Authorization of appropriations. |
| 2003. | Regulations. <ul style="list-style-type: none"> (a) Incorporation of part 32 of title 25 of Code of Federal Regulations. (b) Application of parts 31, 33, 36, 39, 42, and 43 of title 25 of Code of Federal Regulations. (c) Regulations prescribed after June 30, 1989. (d) “Regulation” defined. |
| 2004. | School boundaries. <ul style="list-style-type: none"> (a) Establishment. (b) Alternative or revised boundaries. |

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	(c) Reservation as boundary. (d) Coordination and consultation with tribes and school boards.	2011.	Policy for Indian control of Indian education. (a) Facilitation of Indian control. (b) Consultation with tribes.
2005.	Facilities construction. (a) Compliance with health and safety standards. (b) Omitted. (c) Priorities. (d) Hazardous conditions at Bureau schools. (e) Authorization of appropriations.	2012.	Education personnel. (a) In general. (b) Regulations. (c) Qualifications of educators. (d) Hiring of educators. (e) Discharge and conditions of employment of educators. (f) Indian preferences. (g) Applicability of chapter 51 of title 5. (h) Compensation or annual salary. (i) Annual and sick leave. (j) Liquidation of remaining leave upon termination. (k) Transfer of remaining leave upon transfer, promotion, or reemployment. (l) Ineligibility for employment of voluntarily terminated educators. (m) Dual compensation. (n) Definitions. (o) Covered individuals; election. (p) Furlough without consent.
2006.	Bureau of Indian Affairs education functions. (a) Formulation and establishment of policy and procedure; supervision of programs and expenditures. (b) Direction and supervision of personnel operations. (c) Evaluation of programs; services and support functions; technical and coordinating assistance. (d) Construction and improvement of facilities; operation and maintenance of facilities. (e) Acceptance of gifts and bequests. (f) "Functions" defined.	2013.	Management information system.
2007.	Allotment formula. (a) Factors considered; revision to reflect standards. (b) Pro rata allotment. (c) Annual adjustment; reservation of amount for training. (d) Reservation of amount for emergencies. (e) Supplemental appropriations. (f) "Eligible Indian student" defined. (g) Tuition. (h) Funds available without fiscal year limitation. (i) Students boarding at Richfield Dormitory, Richfield, Utah.	2014.	Bureau education policies.
		2015.	Uniform education procedures and practices.
		2016.	Recruitment of Indian educators.
		2017.	Biennial report.
		2018.	Rights of Indian students.
		2019.	Repealed.
		2020.	Voluntary services.
		2021.	Proration of pay. (a) Election of employee. (b) Change of election. (c) Lump sum payment. (d) "Educator" and "education position" defined.
2008.	Administrative cost grants. (a) Purpose; effect upon appropriated amounts. (b) Determination of amount; reduction for Federal education program payments; reimbursement by Federal departments or agencies. (c) Administrative cost percentage rate. (d) Administrative cost account; availability of funds; effect upon indirect cost recovery determinations. (e) Definitions. (f) Studies for determination of factors affecting costs, minimum and maximum base rates, and standard direct cost base; report to Congress. (g) Authorization of appropriations; procedure where amount of funds necessary exceeds appropriated amount. (h) Amounts for fiscal years 1989, 1990, and 1991. (i) Application of section to certain tribally controlled schools.	2022.	Extracurricular activities. (a) Stipend. (b) Election not to receive stipend. (c) Coverage of Bureau employees.
		2023.	Early childhood development program. (a) In general. (b) Amount of grant. (c) Application. (d) Functions of programs. (e) Coordination with other programs. (f) Administrative costs. (g) Authorization of appropriations.
		2024.	Tribal departments of education. (a) In general. (b) Grants. (c) Priorities. (d) Terms, conditions, or requirements. (e) Authorization of appropriations.
2009.	Division of Budget Analysis. (a) Establishment. (b) Functions. (c) Annual reports.	2025.	Payments.
2010.	Uniform direct funding and support. (a) Establishment of system. (b) Local financial plans for expenditure of funds. (c) Use of self-determination grant funds. (d) Technical assistance and training. (e) Summer program of academic and support services. (f) Cooperative agreements. (g) Product or result of student projects. (h) Federal matching funds requirements.	2026.	Definitions.

CODIFICATION

Part B of title XI of the Education Amendments of 1978, comprising this chapter, was originally enacted as part B of title XI of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2316, and amended by 1978 Reorg. Plan No. 2, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96-46, Aug. 6, 1979, 93 Stat. 338; Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 97-375, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-511, Oct. 19, 1984, 98 Stat. 2366; Pub. L. 99-89, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99-228, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207; Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130; Pub. L. 100-427, Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101-301, May 24, 1990, 104 Stat. 206; Pub. L. 102-531, Oct. 27, 1992, 106 Stat. 3469. Part B of title XI of the Act is shown herein, however, as having been added by Pub. L. 103-382 without reference to such intervening amendments because of the extensive amendment of the part's provisions by Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 458bbb-2, 2503, 2504, 2505 of this title; title 20 section 3489.

§ 2001. Standards for basic education of Indian children in Bureau of Indian Affairs schools

(a) Purpose

(1) The purpose of the standards developed under this section shall be to afford Indian students being served by a Bureau funded school with the same opportunities as all other students to achieve the National Education Goals embodied in the Goals 2000: Educate America Act [20 U.S.C. 5801 et seq.]. Consistent with the provisions of this section and section 2011 of this title, the Secretary shall take such actions as are necessary to coordinate standards developed and implemented under this section with those in the State improvement plans developed and implemented pursuant to the Goals 2000: Educate America Act for the States in which each Bureau funded school operates. In developing and reviewing such standards and coordination, the Secretary shall utilize the findings and recommendations of the panel established in section 315(b)(4)¹ of such Act.

(2) The Secretary shall take immediate steps to encourage school boards of Bureau funded schools to engage their communities in adopting declarations of purposes of education in their communities, analyzing the implications of such purposes for their schools, and determining how such purposes may be made to motivate students and faculties and otherwise animate their schools by May 1, 1995. Such declarations shall represent the aspirations of a community for the kinds of persons such community wants its children to increasingly become, and shall include such purposes as assuring that all learners are becoming accomplished in ways important to themselves and respected by their parents and communities, shaping worthwhile and satisfying lives for themselves, exemplifying the best values of the community and humankind, and becoming increasingly effective in shaping the character and quality of the world all learners share.

(b) Studies and surveys

Within 18 months of the publication of the voluntary national content standards described in section 203(a)(2) of the Goals 2000: Educate America Act [20 U.S.C. 5823(a)(2)], the Secretary, in consultation with the Secretary of Education and Indian organizations and tribes, shall carry out or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau funded schools. Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographic isolation, and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

¹ See References in Text note below.

(c) Revision of minimum academic standards

(1) The Secretary shall revise the minimum academic standards published in the Federal Register of September 9, 1985 (50 Fed. Reg. 174) for the basic education of Indian children in accordance with the purpose described in subsection (a) of this section and the findings of the studies and surveys described in subsection (b) of this section, and shall publish such revised standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within 21 months of October 20, 1994, the Secretary shall establish final standards, distribute such standards to all the tribes and publish such final standards in the Federal Register. The Secretary shall revise such final standards periodically as necessary. Prior to any revision of such final standards, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) The standards described in paragraph (1) shall apply to Bureau schools, and subject to subsection (f) of this section, to contract or grant schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe.

(d) Alternative or modified standards

The Secretary shall provide alternative or modified standards in lieu of the standards established under subsection (c) of this section, where necessary, so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located.

(e) Waiver of standards

A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsection² (c) and (d) of this section, where such standards are deemed by such body to be inappropriate. The tribal governing body or designated school board shall, within 60 days thereafter, submit to the Secretary a proposal for alternative standards that take into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable.

(f) Implementation of standards

(1) The Secretary, through contracting and grant-making procedures, shall assist school boards of contract or grant schools in the implementation of the standards established under subsections (c) and (d) of this section, if the school boards request that such standards, in part or in whole, be implemented. At the request of a contract or grant school board, the Sec-

² So in original. Probably should be "subsections".

retary shall provide alternative or modified standards for the standards established under subsections (c) and (d) of this section to take into account the needs of the Indian children and the contract or grant school.

(2) Within 1 year of August 15, 1985, the Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract or grant schools. Such standards shall yield data results comparable to those used by Bureau schools.

(g) Annual plan for meeting of standards

Subject to subsections (e) and (f) of this section, the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. Not later than January 1, 1995, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau schools and contract or grant schools up to the level required by the applicable standards established under this section. Such plan shall include detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards.

(h) Closure or consolidation of schools

(1) Except as specifically required by statute, no school or peripheral dormitory operated by the Bureau on or after January 1, 1992, may be closed or consolidated or have its program substantially curtailed unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply. The requirements of this subsection shall not apply when a temporary closure, consolidation, or substantial curtailment is required by plant conditions which constitute an immediate hazard to health and safety.

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing, consolidation, or substantial curtailment of Bureau schools in accordance with the requirements of this subsection.

(3) Whenever closure, transfer to any other authority, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board, will be notified as soon as such consideration or review begins, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, transfer to any other authority, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the

proposed closure date. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) The Secretary may terminate, contract, transfer to any other authority, or consolidate or substantially curtail the operation or facilities of—

(A) any Bureau funded school that is operated on or after April 1, 1987,

(B) any program of such a school that is operated on or after April 1, 1987, or

(C) any school board of a school operated under a grant under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.],

only if the tribal governing body approves such action.

(i) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau schools and contract or grant schools up to the level required by the applicable standards established under this section.

(j) Alcohol and substance abuse prevention and treatment

(1) All Bureau funded schools shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

(A) any Bureau school (subject to the approval of the school board of such school);

(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or

(C) any school board of a school operating under a grant under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(2) In schools operated directly by the Bureau, the Secretary shall provide for—

(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

(B) individual student crisis intervention.

(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

(4) Schools requesting program assistance under this subsection are encouraged to involve family units and, where appropriate, tribal elders and Native healers in such instructions.

(k) "Tribal governing body" defined

For purposes of this section, the term "tribal governing body" means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

(l) Application for contracts or grants for non-Bureau funded schools or expansion of Bureau funded schools

(1)(A)(i) The Secretary shall only consider the factors described in subparagraphs (B) and (C) in reviewing—

(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau funded school; and

(II) applications from any tribe or school board of any Bureau funded school for—

(aa) a school which is not a Bureau funded school; or

(bb) the expansion of a Bureau funded school which would increase the amount of funds received by the Indian tribe or school board under section 2007 of this title.

(ii) The Secretary shall give consideration to all of the factors under clause (i), but none of the applications under clause (i) may be denied based primarily upon the geographic proximity of public education.

(B) The Secretary shall consider the following factors relating to the program that is the subject of an application described in subparagraph (A):

(i) The adequacy of facilities or the potential to obtain or provide adequate facilities.

(ii) Geographic and demographic factors in the affected areas.

(iii) Adequacy of the applicant's program plans or, in the case of a Bureau funded school, of projected needs analysis done either by a tribe or by Bureau personnel.

(iv) Geographic proximity of comparable public education.

(v) The stated needs of all affected parties, including students, families, tribal governments at both the central and local levels, and school organizations.

(C) The Secretary shall consider with respect to applications described in subparagraph (A) the following factors relating to all the educational services available at the time the application is considered:

(i) Geographic and demographic factors in the affected areas.

(ii) Adequacy and comparability of programs already available.

(iii) Consistency of available programs with tribal educational codes or tribal legislation on education.

(iv) The history and success of these services for the proposed population to be served, as determined from all factors and not just standardized examination performance.

(2)(A) The Secretary shall make a determination of whether to approve any application described in paragraph (1)(A) by not later than the date that is 180 days after the day on which such application is submitted to the Secretary.

(B) If the Secretary fails to make the determination described in subparagraph (A) with respect to an application by the date described in subparagraph (A), the application shall be treated as having been approved by the Secretary.

(3)(A) Any application described in paragraph (1)(A) may be submitted to the Secretary only if—

(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application, and

(ii) written evidence of such approval is submitted with the application.

(B) Each application described in paragraph (1)(A)—

(i) shall provide information concerning each of the factors described in paragraph (1)(B), and

(ii) may provide information concerning the factors described in paragraph (1)(C).

(4) Whenever the Secretary makes a determination to deny approval of any application described in paragraph (1)(A), the Secretary shall—

(A) state the objections in writing to the applicant by not later than the date that is 180 days after the day on which the application is submitted to the Secretary,

(B) provide assistance to the applicant to overcome stated objections, and

(C) provide the applicant a hearing, under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], and an opportunity to appeal the objections raised by the Secretary.

(5)(A) Except as otherwise provided in this paragraph, the action which is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective with the commencement of the academic year succeeding the fiscal year in which the application is approved, or at an earlier date determined by the Secretary.

(B) If an application is treated as having been approved by the Secretary by reason of paragraph (2)(B), the action that is the subject of the application shall become effective on the date that is 18 months after the date on which the application is submitted to the Secretary, or at an earlier date determined by the Secretary.

(Pub. L. 95-561, title XI, § 1121, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979; amended Pub. L. 104-134, title I, § 101(d) [title VII, § 703(d)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-255; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-362, title VIII, § 801(c)(1), Nov. 10, 1998, 112 Stat. 3287.)

REFERENCES IN TEXT

The Goals 2000: Educate America Act, referred to in subsec. (a)(1), is Pub. L. 103-227, Mar. 31, 1994, 108 Stat. 125 (except titles V and IX), which is classified principally to chapter 68 (§5801 et seq.) of Title 20, Education (except subchapters V (§5931 et seq.) and IX (§6001 et seq.)). For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 20 and Tables.

Section 315 of the Goals 2000: Educate America Act, referred to in subsec. (a)(1), was classified to section 5895 of Title 20, Education, and was repealed by Pub. L. 106-113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (h)(4)(C) and (j)(1)(C), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act referred to in subsecs. (j)(1)(B) and (l)(4)(C), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2001, Pub. L. 95-561, title XI, §1121, Nov. 1, 1978, 92 Stat. 2316; Pub. L. 96-46, §2(b)(2)-(4), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98-511, title V, §502, Oct. 19, 1984, 98 Stat. 2391; Pub. L. 99-89, §2, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99-570, title IV, §4133(b)(3), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5102, 5104, Apr. 28, 1988, 102 Stat. 363, 365; Pub. L. 100-427, §1(a), (b), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 102-531, title III, §312(b), Oct. 27, 1992, 106 Stat. 3504, related to standards for basic education of Indian children in Bureau or contract schools, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

1998—Subsec. (h)(4), (5). Pub. L. 105-362 redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “The Secretary shall make a report to Congress, the affected tribe, and the designated local school board describing the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to ensure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, transfer to any other authority, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year after such report is made.”

1996—Subsec. (b). Pub. L. 104-134 substituted “203(a)(2)” for “213(a)”.

SHORT TITLE OF 1988 AMENDMENT

Section 5101 of Pub. L. 100-297 provided that: “This part [part A (§§5101-5120) of title V of Pub. L. 100-297, enacting sections 2008a, 2022a, and 2022b of this title, amending this section and sections 2002 to 2005, 2008 to 2011, and 2019 of this title, repealing section 241bb-1 of Title 20, Education, enacting provisions set out as notes under section 2011 of this title and section 1411 of Title 20, and repealing provisions set out as a note under section 241aa of Title 20] may be cited as the ‘Indian Education Amendments of 1988’.”

SHORT TITLE OF 1985 AMENDMENT

Section 1(a) of Pub. L. 99-89 provided that: “This Act [amending this section and sections 2004, 2006, 2008, 2009, 2016, 2020, 2021, and 2022 of this title, repealing section 2023 of this title, and enacting provisions set out as a note under this section] may be cited as the ‘Indian Education Technical Amendments Act of 1985’.”

SHORT TITLE OF 1984 AMENDMENT

Section 501(a) of title V of Pub. L. 98-511 provided that: “This title [enacting sections 2020 to 2023 of this title, amending this section, sections 2004, 2006, 2008, 2009, 2011, 2012, 2016, 2018 of this title, and sections 241aa to 241ff, 1211a, 1221g, 3385, 3385a, and 3385b of Title 20, Education, and enacting provisions set out as a note under section 241ff of Title 20] may be cited as the ‘Indian Education Amendments of 1984’.”

THERAPEUTIC MODEL DEMONSTRATION SCHOOLS

Section 566 of Pub. L. 103-382 provided that:

“(a) AUTHORIZATION.—

“(1) IN GENERAL.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, is au-

thorized to establish demonstration schools, based on the therapeutic model described in this section, to provide services necessary to achieve positive changes in the attitudes, behavior, and academic performance of Indian youth attending off-reservation boarding schools.

“(2) PURPOSE.—The purpose of the therapeutic model demonstration schools is—

“(A) to provide a program, based on an annual written plan, linking clinicians, counselors, and mental health professionals with academic program personnel in a culturally sensitive residential program tailored to the particular needs of Indian students;

“(B) to provide for a continued evaluation of the planning and implementation of the therapeutic model in the designated schools; and

“(C) to determine what steps the Bureau of Indian Affairs must take and what resources are required to transform existing off-reservation boarding schools to meet the needs of chemically dependent, emotionally disturbed, socially troubled, or other at-risk Indian youth who attend such schools.

“(b) LOCATION.—The Secretary shall initiate the therapeutic model at two schools during school years 1994 through 1996, and shall give priority to—

“(1) one school that is the recipient of a grant under section 5204 of the August [Augustus] F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 [25 U.S.C. 2503] during the 1994-1995 school year; and

“(2) one school operated by the Bureau of Indian Affairs during the 1995-1996 school year.

“(c) SERVICES.—The demonstration schools shall provide an integrated residential environment that may include—

“(1) mental health services;

“(2) education;

“(3) recreation therapy;

“(4) social service programs;

“(5) substance abuse education and prevention; and

“(6) other support services for aftercare.

“(d) STAFFING.—The demonstration schools shall be staffed with health and social service professionals, and educators, and may include—

“(1) clinical psychologists;

“(2) child psychologists;

“(3) substance abuse counselors;

“(4) social workers; and

“(5) health educators.

“(e) ENROLLMENT.—Notwithstanding any other provision of law, the Secretary of the Interior may limit the enrollment at the demonstration schools.

“(f) ASSISTANCE.—The Secretary is authorized to enter into agreements with other organizations and agencies, including the Indian Health Service, to carry out this section.

“(g) REPORT.—Not later than July 31 of each year, the Secretary of the Interior shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives on the progress of the Department of the Interior in the development of the demonstration schools.”

NATIVE AMERICANS EDUCATIONAL ASSISTANCE ACT

Pub. L. 102-524, §4, Oct. 26, 1992, 106 Stat. 3437, as amended by Pub. L. 105-362, title VIII, §801(f), Nov. 10, 1998, 112 Stat. 3288, known as the “Native Americans Educational Assistance Act”, authorized Secretary of the Interior to enter into an agreement with a non-profit captioning agency engaged in manufacturing and distributing captioning decoders, for the purpose of carrying out a demonstration project to determine effectiveness of captioned educational materials as an educational tool in schools operated by Bureau of Indian Affairs, and authorized to be appropriated sums necessary to carry out this section.

WHITE HOUSE CONFERENCE ON INDIAN EDUCATION

Part E (§§5501-5508) of title V of Pub. L. 100-297, as amended by Pub. L. 100-427, §26, Sept. 9, 1988, 102 Stat.

1614; Pub. L. 101-301, §5(e), May 24, 1990, 104 Stat. 208; Pub. L. 102-27, title III, §306, Apr. 10, 1991, 105 Stat. 152, provided for establishment, membership, etc., of a White House Conference on Indian Education to explore feasibility of establishing an independent Board of Indian Education that would assume responsibility for all existing Federal programs relating to education of Indians and develop recommendations for improvement of educational programs to make the programs more relevant to needs of Indians, established an Interagency Task Force on the White House Conference on Indian Education to plan and conduct the Conference and an Advisory Committee on the Conference to assist and advise the Task Force in planning and conducting the Conference, and directed the Conference to submit to President not later than 120 days following the close of the Conference a final report of the findings and recommendations made by the Conference, which final report was to be submitted by President to Congress within 90 days of receipt by President, with a statement of President's recommendations, and which final report was submitted to Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2002, 2007, 2010, 2017, 2506 of this title.

§ 2002. National criteria for dormitory situations

(a) Study of costs

The Secretary, in consultation with the Secretary of the Department of Education, and in consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau schools, and contract or grant schools, for the purpose of establishing national criteria for such dormitory situations. Such criteria shall include adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) Distribution and publication of criteria

Not later than January 1, 1996, the Secretary shall propose such criteria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within 18 months of October 20, 1994, the Secretary shall establish final criteria, distribute such final criteria to all the tribes, and publish such final criteria in the Federal Register. The Secretary shall revise such final criteria periodically as necessary. Any revisions to the criteria established under this section shall be developed subject to requirements established under section 2011 of this title.

(c) Implementation

The Secretary shall begin to implement the criteria established under this section immediately upon the date of the establishment of such criteria. Not later than January 1, 1997, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau contract boarding schools up to the criteria established under this section. Such plan shall include predictions for the relative need for each boarding school in the future, detailed information on the status of each school

in relation to the criteria established under this section, specific cost estimates for meeting such criteria at each school, and specific time lines for bringing each school up to the level required by such criteria.

(d) Waiver

(1) The criteria established under this section may be waived in the same manner as the standards provided under section 2001(c) of this title may be waived under section 2001(e) of this title.

(2) No school in operation on or before January 1, 1987 (regardless of compliance or non-compliance with the criteria established under this section) may be closed, transferred to another authority, consolidated or have its program substantially curtailed for failure to meet the criteria.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

(Pub. L. 95-561, title XI, §1122, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3984; amended Pub. L. 105-362, title VIII, §801(c)(2), Nov. 10, 1998, 112 Stat. 3288.)

PRIOR PROVISIONS

A prior section 2002, Pub. L. 95-561, title XI, §1122, Nov. 1, 1978, 92 Stat. 2318; Pub. L. 96-46, §2(b)(5), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 100-297, title V, §5105, Apr. 28, 1988, 102 Stat. 367, related to national criteria for dormitory situations, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

1998—Subsec. (d)(3). Pub. L. 105-362 struck out par. (3) which read as follows: “By not later than May 1, 1996, the Secretary shall submit to the Congress a report detailing the costs associated with, and the actions necessary for, complete compliance with the criteria established under this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2007, 2017 of this title.

§ 2003. Regulations

(a) Incorporation of part 32 of title 25 of Code of Federal Regulations

The provisions of part 32 of title 25 of the Code of Federal Regulations, as in effect on January 1, 1987, are incorporated into this Act and shall be treated as though such provisions are set forth in this subsection. Accordingly, such provisions may be altered only by means of an amendment to this subsection that is contained in an Act or joint resolution which is enacted into law. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before November 1, 1978,¹ the provisions of this Act and the provisions of such other statutory law shall govern.

(b) Application of parts 31, 33, 36, 39, 42, and 43 of title 25 of Code of Federal Regulations

The provisions of parts 31, 33, 36, 39, 42, and 43 of title 25 of the Code of Federal Regulations, as

¹ See Codification note below.

in effect on January 1, 1987, shall be applied by the Federal Government and shall not, before July 1, 1989, be amended, revoked, or altered in any manner. No officer or employee of the executive branch shall have the authority to issue any other regulations, prior to July 1, 1989, that supersede, supplement, or otherwise affect the provisions of such parts. To the extent that the provisions of such parts do not conform with this Act or any statutory provision of law enacted before November 1, 1978,¹ the provisions of this Act and the provisions of such other statutory law shall govern.

(c) Regulations prescribed after June 30, 1989

After June 30, 1989, no regulation prescribed for the application of any program provided under this chapter shall become effective unless—

(1) the regulation has been published as a proposed regulation in the Federal Register,

(2) an opportunity of not less than 90 days has been afforded the public to comment on the published proposed regulation, and

(3) the regulation has, after such period for public comment, been published in the Federal Register as a final regulation.

(d) “Regulation” defined

For purposes of this section, the term “regulation” means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by any officer or employee of the executive branch.

(Pub. L. 95-561, title XI, §1123, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3985.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (c), was in the original “this title”, meaning title XI (§§1101-1146) of Pub. L. 95-561, as amended, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

CODIFICATION

In subsecs. (a) and (b), “November 1, 1978” was substituted for “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 95-561, which enacted this chapter.

PRIOR PROVISIONS

A prior section 2003, Pub. L. 95-561, title XI, §1123, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, §5106, Apr. 28, 1988, 102 Stat. 367, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2004. School boundaries

(a) Establishment

The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

(b) Alternative or revised boundaries

(1) Except as provided in paragraph (2), on or after July 1, 1985, no attendance area shall be

changed or established with respect to any Bureau funded school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been (i) afforded at least six months notice of the intention of the Bureau to change or establish such attendance area, and (ii) given the opportunity to propose alternative boundaries. Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs.

(2) In any case where there is more than 1 Bureau funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

(c) Reservation as boundary

In any case where there is only 1 Bureau operated program located on an Indian reservation, the attendance area for the program shall be the boundaries of the reservation served, and those students residing near the reservation shall also receive services from such program.

(d) Coordination and consultation with tribes and school boards

The Bureau shall include in the regulations the requirement that each appropriate education line officer coordinate and consult with the affected tribes and relevant school boards in the establishment of such geographic boundaries.

(Pub. L. 95-561, title XI, §1124, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3986.)

PRIOR PROVISIONS

A prior section 2004, Pub. L. 95-561, title XI, §1124, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 98-511, title V, §503, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, §3, Aug. 15, 1985, 99 Stat. 380; Pub. L. 100-297, title V, §5120, Apr. 28, 1988, 102 Stat. 384, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2005. Facilities construction

(a) Compliance with health and safety standards

The Secretary shall immediately begin to bring all schools, dormitories, and other facilities operated by the Bureau or under contract or grant with the Bureau in connection with the education of Indian children into compliance with all applicable Federal, tribal, or State health and safety standards, whichever provide greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), with section 794 of title 29, and with the Americans with Disabilities Act of 1990 [42

U.S.C. 12101 et seq.], except that nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on October 20, 1994.

(b) Omitted

(c) Priorities

Within six months of November 1, 1978,¹ the Secretary shall submit to the appropriate committees of Congress, and publish in the Federal Register, the system used to establish priorities for school construction projects. At the time any budget request for school construction is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all school construction priorities.

(d) Hazardous conditions at Bureau schools

(1) A Bureau school may be closed or consolidated, and the programs of a Bureau school may be substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau determines that such conditions exist at the Bureau school.

(2)(A) In making determinations described in paragraph (1) before July 1, 1989, health and safety officers of the Bureau shall use the health and safety guidelines of the Bureau that were in effect on January 1, 1988.

(B)(i) If—

(I) the Secretary fails to publish in the Federal Register in final form before July 1, 1989, and

(II) action described in paragraph (1) is taken after June 30, 1989, and before the date on which such regulations are published in final form in the Federal Register by reason of the condition of any plant,

an inspection of the condition of such plant shall be conducted by an appropriate tribal, county, municipal, or State health and safety officer to determine whether conditions at such plant constitute an immediate hazard to health and safety. Such inspection shall be completed by not later than the date that is 30 days after the date on which the action described in paragraph (1) is taken.

(ii) The inspection required under clause (i) shall be conducted by a health and safety officer designated jointly by the Secretary and the tribes affected by the action described in paragraph (1). If the Secretary and such tribes are unable to agree on the designation of the health and safety officer, the Secretary shall designate the health and safety officer and shall provide notice of such designation to each of such tribes before the inspection is conducted by such officer.

(iii) If the health and safety officer conducting an inspection of a plant required under clause (i) determines that conditions at the plant do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made by reason of conditions at the plant shall immediately cease and any school closed

by reason of conditions at the plant shall be reopened immediately.

(3) If—

(A) a Bureau school is temporarily closed or consolidated, or the programs of a Bureau school are substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety, and

(B) the Secretary estimates that the closure, consolidation, or curtailment will be more than 1 year in duration,

the Secretary shall submit to the Congress, by not later than the date that is 6 months after the date on which the closure, consolidation, or curtailment is initiated, a report which sets forth the reasons for such temporary actions and the actions the Secretary is taking to eliminate the conditions that constitute the hazard.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out subsection (a) of this section.

(Pub. L. 95-561, title XI, § 1125, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3986.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (a), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

CODIFICATION

Subsec. (b) of this section, which required the Secretary of the Interior, each time the annual budget request for Bureau educational services was presented, to submit to appropriate committees of Congress a detailed plan to bring facilities into compliance with standards as provided in this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 113 of House Document No. 103-7.

In subsec. (c), “November 1, 1978” was substituted for “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 95-561, which enacted this chapter.

PRIOR PROVISIONS

A prior section 2005, Pub. L. 95-561, title XI, § 1125, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, § 5103, Apr. 28, 1988, 102 Stat. 364, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 103-382.

USE OF TRIBAL PRIORITY ALLOCATIONS FUNDS FOR SCHOOL FACILITIES

Pub. L. 105-277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-246, provided in part: “That hereafter tribes may use tribal priority allocations funds for the replacement and repair of school facilities in compliance with 25 U.S.C. 2005(a), so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocation funds”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2006, 2017 of this title.

¹ See Codification note below.

§ 2006. Bureau of Indian Affairs education functions

(a) Formulation and establishment of policy and procedure; supervision of programs and expenditures

The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education.

(b) Direction and supervision of personnel operations

The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including school or institution custodial or maintenance personnel. The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau Offices and the Office to facilitate the consideration of all contract functions relating to education. Except as required by section 2009 of this title, nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Evaluation of programs; services and support functions; technical and coordinating assistance

Education personnel who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b) of this section shall—

(1) monitor and evaluate Bureau education programs,

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions, and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

(d) Construction and improvement of facilities; operation and maintenance of facilities

(1) The Assistant Secretary shall submit in the annual Budget a plan—

(A) for school facilities to be constructed under the system required by section 2005(c) of this title;

(B) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) including a 5-year plan for capital improvements.

(2)(A) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include—

(i) a method of computing the amount necessary for each education facility;

(ii) similar treatment of all Bureau funded schools;

(iii) a notice of an allocation of appropriated funds from the Director of the Office directly to the appropriate education line officers; and

(iv) a system for the conduct of routine preventive maintenance.

(B) The appropriate education line officers shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers, except that no funds under this chapter may be authorized for expenditure unless such appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner. Subject to the requirements of subsection (b) of this section, nothing in this Act shall be construed to require the provision of separate operations and maintenance personnel for the Office.

(3) The requirements of this subsection shall be implemented not later than July 1, 1995.

(e) Acceptance of gifts and bequests

Notwithstanding any other provision of law, the Director shall promulgate guidelines for the establishment of mechanisms for the acceptance of gifts and bequests for the use of, and benefit of, particular schools or designated Bureau operated education programs, including, where appropriate, the establishment and administration of trust funds. When a Bureau operated program is the beneficiary of such a gift or bequest, the Director shall make provisions for monitoring its use, and shall report to the appropriate committees of Congress the amount and terms of such gift or bequest, the use to which such gift or bequest is put, and any positive results achieved by such action.

(f) “Functions” defined

For the purpose of this section the term “functions” includes powers and duties.

(Pub. L. 95-561, title XI, §1126, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3988.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (d)(2)(B), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2006, Pub. L. 95-561, title XI, §1126, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 96-46, §2(b)(6), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §504, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, §4, Aug. 15, 1985, 99 Stat. 381; Pub. L. 100-427, §1(c)(3), Sept. 9, 1988, 102 Stat. 1603, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2504 of this title.

§ 2007. Allotment formula**(a) Factors considered; revision to reflect standards**

(1) The Secretary shall establish, by regulation adopted in accordance with section 2019¹ of this title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau funded school. In establishing such formula, the Secretary shall consider—

- (A) the number of eligible Indian students served and size of the school;
- (B) special cost factors, such as—
 - (i) the isolation of the school;
 - (ii) the need for special staffing, transportation, or educational programs;
 - (iii) food and housing costs;
 - (iv) maintenance and repair costs associated with the physical condition of the educational facilities;
 - (v) special transportation and other costs of isolated and small schools;
 - (vi) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;
 - (vii) costs associated with greater lengths of service by educational personnel; and
 - (viii) special programs for gifted and talented students;
- (C) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located; and
- (D) such other relevant factors as the Secretary determines are appropriate.

(2) Upon the establishment of the standards required by sections 2001 and 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost and funding standards so established. Prior to January 1, 1996, the Secretary shall review the formula established under this section and shall take such steps as may be necessary to increase the availability of counseling services for students in off-reservation boarding schools and other Bureau operated residential facilities. Concurrent with such action, the Secretary shall review the standards established under section 2001 of this title to be certain that adequate provision is made for parental notification regarding, and consent for, such counseling services.

(b) Pro rata allotment

Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau funded schools shall be allotted pro rata in accordance with the formula established under subsection (a) of this section.

(c) Annual adjustment; reservation of amount for training

(1) For fiscal year 1990, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) of this section to—

- (A) use a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and

eighth grades of the school in considering the number of eligible Indian students served by the school;

(B) consider a school with an enrollment of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools; and

(C) take into account the provision of residential services on a less than 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved.

(2)(A) The Secretary shall reserve for national school board training 0.2 percent of the funds appropriated for each fiscal year for distribution under this section. Such training shall be conducted through the same organizations through which, and in the same manner in which, the training was conducted in fiscal year 1992, except that the contracts for distribution of such funds shall require that such funds be distributed by the recipient organizations in a manner that assures the same pro rata share is made available for training for each school board in the system. If the contract for such training is not awarded before May 1 of each fiscal year, the contract under which such training was provided for the fiscal year preceding such fiscal year shall be renewed by the Secretary for such fiscal year. The agenda for the training sessions shall be established by the school boards through their regional or national organizations.

(B) For each year in which the Secretary uses a weighted unit formula established under subsection (a) of this section to fund Bureau schools, a Bureau school which generates less than 168 weighted units shall receive an additional 2 weighted units to defray school board activities.

(C) From the funds allotted in accordance with the formula established under subsection (a) of this section for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

- (i) \$5,000, or
- (ii) the lesser of—
 - (I) \$15,000, or
 - (II) 1 percent of such allotted funds,

for school board activities for such school, including and notwithstanding any other provision of law, meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

(3) The Secretary shall adjust the formula established under subsection (a) of this section to use a weighted unit of 2.0 for each eligible Indian student that—

- (A) is gifted and talented, and
- (B) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school.

(4)(A) The Secretary shall adjust the formula established under subsection (a) of this section to use a weighted unit of 0.25 for each eligible Indian student who is enrolled in a year-long credit course in an Indian or Native language as

¹ See References in Text note below.

part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school.

(B) The adjustment required under subparagraph (A) shall be used for such school after—

(i) the certification of the Indian or Native language curriculum by the school board of such school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second school year following the school year for which the certification is made; and

(ii) the funds appropriated for allotment under this section are designated by the appropriations Act appropriating such funds as the amount necessary to implement such adjustment at such school without reducing allotments made under this section to any school by virtue of such adjustment.

(d) Reservation of amount for emergencies

The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount which, in the aggregate, shall equal 1 percent of the funds available for such purpose for that fiscal year. Such funds shall be used, at the discretion of the Director of the Office, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section. Funds reserved under this subsection may only be expended for education services or programs at a school site (as defined in section 2503(c)(2) of this title). Funds reserved under this subsection shall remain available without fiscal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds. Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

(e) Supplemental appropriations

Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

(f) “Eligible Indian student” defined

For the purpose of this section, the term “eligible Indian student” means a student who—

(1) is a member of or is at least a ¼ degree Indian blood descendant of a member of an Indian tribe which is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians, and

(2) resides on or near an Indian reservation or meets the criteria for attendance at a Bureau off-reservation boarding school.

(g) Tuition

(1) An eligible Indian student may not be charged tuition for attendance at a Bureau school or contract or grant school. A student attending a Bureau school under paragraph (2)(C) may not be charged tuition.

(2) The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

(A) the Secretary determines that the student's attendance will not adversely affect the

school's program for eligible Indian students because of cost, overcrowding, or violation of standards,

(B) the school board consents,

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government, employee who lives on or near the school site, or

(D) a tuition is paid for the student that is not more than that charged by the nearest public school district for out-of-district students, is² in addition to the school's allocation under this section.

(3) The school board of a contract or grant school may permit students who are not eligible Indian students under this subsection to attend its contract school or grant school and any tuition collected for those students is in addition to funding under this section.

(h) Funds available without fiscal year limitation

Notwithstanding any other provision of law, at the election of the school board of a Bureau school made at any time during the fiscal year, a portion equal to not more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary shall take steps as may be necessary to implement this provision immediately.

(i) Students boarding at Richfield Dormitory, Richfield, Utah

Beginning with academic year 1994-1995, tuition for the out-of-State students boarding at the Richfield Dormitory in Richfield, Utah, who attend Sevier County high schools in Richfield, Utah, shall be paid from the Indian school equalization program funds authorized in this section and section 2010 of this title at a rate not to exceed the amount per weighted student unit for that year for the instruction of such students. No additional administrative cost funds shall be added to the grant.

(Pub. L. 95-561, title XI, §1127, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3989.)

REFERENCES IN TEXT

Section 2019 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105-362, title VIII, §801(c)(5), Nov. 10, 1998, 112 Stat. 3288.

PRIOR PROVISIONS

A prior section 2007, Pub. L. 95-561, title XI, §1127, Nov. 1, 1978, 92 Stat. 2320, related to policies and procedures for implementation of transferred administrative functions, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2010 of this title.

§ 2008. Administrative cost grants

(a) Purpose; effect upon appropriated amounts

(1) The Secretary shall, subject to the availability of appropriated funds, provide grants to

²So in original. Probably should be “students. The tuition collected is”.

each tribe or tribal organization operating a contract school or grant school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract or grant schools in order to—

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

(2) Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

(b) Determination of amount; reduction for Federal education program payments; reimbursement by Federal departments or agencies

(1) The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau. The administrative cost percentage rate determined under subsection (c) of this section does not apply to other programs operated by the tribe or tribal organization.

(2) The Secretary shall—

(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization, and

(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

(c) Administrative cost percentage rate

(1) For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

(A) the sum of—

(i) the amount equal to—

(I) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(II) the minimum base rate, plus

(ii) the amount equal to—

(I) the standard direct cost base, multiplied by

(II) the maximum base rate, by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year, plus

(ii) the standard direct cost base.

(2) The administrative cost percentage rate shall be determined to the $\frac{1}{100}$ of a decimal point.

(d) Administrative cost account; availability of funds; effect upon indirect cost recovery determinations

(1)(A) Funds received by a tribe or contract or grant school as grants under this section for tribal elementary or secondary educational programs may be combined by the tribe or contract or grant school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

(B) Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in subparagraph (A).

(2) Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract or grant school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(3) Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

(4) In applying this section and section 105 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450j] with respect to an Indian tribe or tribal organization that—

(A) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], and

(B) operates 1 or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.],

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs, and of the indirect costs, that are associated with operating the contract or grant school, a school operated under the Tribally Controlled Schools Act of 1988, and all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

(e) Definitions

For purposes of this section:

(1)(A) The term “administrative cost” means the costs of necessary administrative functions which—

(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program,

(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds, and

(iii) are either—

(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or

(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

(B) The term “administrative cost” may include—

(i) contract or grant (or other agreement) administration;

(ii) executive, policy, and corporate leadership and decisionmaking;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and record keeping; and

(vi) costs of necessary insurance, auditing, legal, safety and security services.

(2) The term “Bureau elementary and secondary functions” means—

(A) all functions funded at Bureau schools by the Office;

(B) all programs—

(i) funds for which are appropriated to other agencies of the Federal Government, and

(ii) which are administered for the benefit of Indians through Bureau schools; and

(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

(3)(A) Except as otherwise provided in this subparagraph (B), the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

(i) the second fiscal year preceding such fiscal year, or

(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

(B) In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

(4) The term “maximum base rate” means 50 percent.

(5) The term “minimum base rate” means 11 percent.

(6) The term “standard direct cost base” means \$600,000.

(7) The term “tribal elementary or secondary educational programs” means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

(f) Studies for determination of factors affecting costs, minimum and maximum base rates, and standard direct cost base; report to Congress

(1) Upon April 28, 1988, the Secretary shall—

(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula set forth in subsection (c) of this section, and

(B) conduct a study to determine—

(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs,

(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs, and

(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (c) of this section will—

(I) be equal to the median between the maximum base rate and the minimum base rate, and

(II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.

(2) The studies required under paragraph (1) shall—

(A) be conducted in full consultation (in accordance with section 2011 of this title) with—

(i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c) of this section, and

(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

(B) be conducted onsite with a representative statistical sample of the tribal elemen-

tary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

(C) take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to assure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and

(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how the factors may effectively be incorporated into such formula.

(3) In carrying out the studies required under this subsection, the Secretary shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.

(4) Determinations described in paragraph (2)(C) shall be based on what is pragmatically possible to do at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or other services were delivered instead, during the period of the study.

(5) Upon completion of the studies conducted under paragraph (1), but in no case later than October 1, 1989, the Secretary shall submit to the Congress a report on the findings of the studies, together with determinations based upon such findings that would affect the definitions of terms used in the formula that is set forth in subsection (c) of this section.

(6) The Secretary shall include in the Bureau's justification for each appropriations request for each fiscal year beginning after fiscal year 1989, a projection of the overall costs associated with the formula set forth in subsection (c) of this section for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(7) For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the aggregate direct cost program funding level for all Bureau funded programs which share common administrative cost functions.

(g) Authorization of appropriations; procedure where amount of funds necessary exceeds appropriated amount

(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section.

(2) If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (b) of this section for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (b) of this section for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grant determined under subsection (b) of this section bears to the total of all grants determined under subsection (b) of this section for all tribes and tribal organizations for such fiscal year.

(h) Amounts for fiscal years 1989, 1990, and 1991

(1) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1989 shall—

(A) in lieu of being determined under subsection (b) of this section, be determined for each tribal elementary or secondary educational program on the same basis that indirect costs were determined for such programs for fiscal year 1988, and

(B) be subject to the provisions of subsection (d) of this section.

(2) Notwithstanding any other provision of this section, the amount of the grant provided under this section for fiscal year 1990 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) of this section for fiscal year 1990 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1988 (or fiscal year 1989 if such program was not operated by the tribe or tribal organization during fiscal year 1988), the sum of—

(i) such amount received, plus

(ii) $\frac{1}{3}$ of the excess of—

(I) such amount determined under subsection (b) of this section, over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b) of this section, the excess of—

(i) such amount received, over

(ii) an amount equal to $\frac{1}{3}$ of the excess of—

(I) such amount received, over

(II) such amount determined under subsection (b) of this section.

(3) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1991 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

(A) if the amount of the grant determined under subsection (b) of this section for fiscal year 1991 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1990, the sum of—

- (i) such amount received, plus
- (ii) ½ of the excess of—
 - (I) such amount determined under subsection (b) of this section, over
 - (II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b) of this section, the excess of—

- (i) such amount received, over
- (ii) an amount equal to ½ of the excess of—
 - (I) such amount received over,
 - (II) such amount determined under subsection (b) of this section.

(i) Application of section to certain tribally controlled schools

The provisions of this section shall also apply to those schools operating under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(Pub. L. 95-561, title XI, §1128, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3993.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (d)(4) and (i), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(4)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

Prior sections 2008 and 2008a were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2008, Pub. L. 95-561, title XI, §1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, §2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99-89, §5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99-228, §1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100-297, title V, §§5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100-427, §§2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101-301, §5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103-382, title III, §393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95-561, title XI, §1128A, as added Pub. L. 100-297, title V, §5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100-427, §4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101-301, §5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 458cc, 2503, 2504, 2511 of this title.

§ 2009. Division of Budget Analysis

(a) Establishment

Within 24 months of October 20, 1994, the Secretary shall establish within the Office a Divi-

sion of Budget Analysis (hereinafter referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) Functions

The Division shall have the capacity to conduct such studies, surveys, or other activities as are necessary to gather demographic information on Bureau-funded schools (current and future) and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

(c) Annual reports

The Division shall prepare projections on such amounts, along with such other information as the Director of the Office shall require, for each fiscal year beginning after October 1, 1996. The Director of the Office and the Assistant Secretary for Indian Affairs shall use such reports when preparing their annual budget submissions.

(Pub. L. 95-561, title XI, §1129, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3998.)

PRIOR PROVISIONS

A prior section 2009, Pub. L. 95-561, title XI, §1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98-511, title V, §§506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99-89, §6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99-570, title IV, §4133(b)(4), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100-427, §§6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2006 of this title.

§ 2010. Uniform direct funding and support

(a) Establishment of system

(1) Within six months after October 20, 1994, the Secretary shall establish, by regulation adopted in accordance with section 2019¹ of this title, a system for the direct funding and support of all Bureau funded schools. Such system shall allot funds, in accordance with section 2007 of this title. All amounts appropriated for distribution under this section may be made available under paragraph (2).

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 2007 of this title, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which such amounts are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

- (i) publish, on July 1 of the fiscal year for which the funds are appropriated, allotments to each affected school made under section 2007 of this title of 85 percent of such appropriation; and

¹ See References in Text note below.

(ii) publish, not later than September 30 of such fiscal year, the allotments to be made under section 2007 of this title of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

(3)(A) Notwithstanding any law or regulation, the supervisor of a Bureau school may expend an aggregate of not more than \$35,000 of the amount allotted the school under section 2007 of this title to acquire supplies and equipment for the school without competitive bidding if—

(i) the cost for any single item purchased does not exceed \$10,000;

(ii) the school board approves the procurement;

(iii) the supervisor certifies that the cost is fair and reasonable;

(iv) the documents relating to the procurement executed by the supervisor or other school staff cite this paragraph as authority for the procurement; and

(v) the transaction is documented in a journal maintained at the school clearly identifying when the transaction occurred, what was acquired and from whom, the prices paid, the quantities acquired, and any other information the supervisor or school board considers relevant.

(B) The Director shall be responsible for determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph, and shall be responsible for the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

(4) If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 2007 of this title for any fiscal year by more than 7 percent of the amount of funds available for allotment under such section during the preceding fiscal year—

(A) the Secretary, notwithstanding any other law, may use—

(i) funds appropriated for the operation of any Bureau school that is closed or consolidated, and

(ii) funds appropriated for any program that has been curtailed at any Bureau school,

to fund allotments made under section 2007 of this title, and

(B) the Secretary may waive the application of the provisions of section 2001(h) of this title with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 2007 of this title for such fiscal year.

(b) Local financial plans for expenditure of funds

In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such fi-

nancial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan. The supervisor shall provide the appropriate union representative of the education employees with copies of proposed draft financial plans and all amendments or modifications thereto, at the same time such copies are submitted to the local school board. The supervisor of the school may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board. The appropriate line education officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

(c) Use of self-determination grant funds

Funds for self-determination grants under section 450h(a)(2) of this title shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary may approve applications for funding tribal divisions of education and the development of tribal codes of education from funds appropriated pursuant to section 450h(a)¹ of this title.

(d) Technical assistance and training

In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

(e) Summer program of academic and support services

(1) A financial plan under subsection (b) of this section for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and this Act may be used to augment the services provided in each summer program at the option, and under the

control, of the tribe or Indian controlled school receiving such funds.

(3) The Assistant Secretary of Indian Affairs, acting through the Director of the Office, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

(f) Cooperative agreements

(1) From funds allotted to a Bureau school under section 2007 of this title, the Secretary shall, if specifically requested by the tribal governing body (within the meaning of section 2001(k) of this title), implement any cooperative agreement entered into between the tribe, the Bureau school board, and the local public school district which meets the requirements of paragraph (2) and involves the school. The tribe, the Bureau school board, and the local public school district shall determine the terms of the agreement. Such agreement may encompass coordination of all or any part of the following:

(A) Academic program and curriculum, unless the Bureau school is currently accredited by a State or regional accrediting entity and would not continue to be so accredited.

(B) Support services, including procurement and facilities maintenance.

(C) Transportation.

(2) Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed, though this requirement shall not be construed so as to require equal expenditures or an exchange of similar services.

(g) Product or result of student projects

Notwithstanding any other provision of law, where there is agreement on action between the superintendent and the school board of a Bureau funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

(h) Federal matching funds requirements

Notwithstanding any other provision of law, funds received by a Bureau funded school under this chapter shall not be considered Federal funds for purposes of meeting a matching funds requirement in any Federal program.

(Pub. L. 95-561, title XI, § 1130, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3999.)

REFERENCES IN TEXT

Section 2019 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105-362, title VIII, § 801(c)(5), Nov. 10, 1998, 112 Stat. 3288.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, re-

pealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Section 450h(a) of this title, referred to in subsec. (c), was in the original “section 104(a) of such Act”, meaning section 104(a) of the Indian Self-Determination and Education Assistance Act, which was translated as reading section 103(a) of that Act to reflect the probable intent of Congress, because section 104(a) amended section 3371 of Title 5, Government Organization and Employees, but former section 104(a), which was renumbered section 103(a) by Pub. L. 100-472, title II, § 202(a), Oct. 5, 1988, 102 Stat. 2289, authorizes the Secretary of the Interior to contract with and make grants to tribal organizations.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

This Act, referred to in subsec. (e)(2), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h), was in the original “this title”, meaning title XI (§§ 1101-1152) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95-561, title XI, § 1130, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 100-297, title V, § 5111, Apr. 28, 1988, 102 Stat. 376; Pub. L. 100-427, § 7, Sept. 9, 1988, 102 Stat. 1605, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2007, 2012, 2017, 2411 of this title; title 20 section 7816.

§ 2011. Policy for Indian control of Indian education

(a) Facilitation of Indian control

It shall be the policy of the Secretary and the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

(b) Consultation with tribes

(1) All actions under this Act shall be done with active consultation with tribes.

(2) The consultation required under paragraph (1) means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties. During such discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be given an opportunity to participate and discuss the options presented or to present other alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from informa-

tion educed or presented by the interested parties during 1 or more of the discussions and deliberations, that there is a substantial reason for another course of action. The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties.

(Pub. L. 95-561, title XI, §1131, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4001.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2011, Pub. L. 95-561, title XI, §1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98-511, title V, §507(b), Oct. 19, 1984, 98 Stat. 2396; Pub. L. 100-297, title V, §§5112(a), (b)(1), 5114, 5115, Apr. 28, 1988, 102 Stat. 377, 378, 380; Pub. L. 100-427, §9(a)-(c), Sept. 9, 1988, 102 Stat. 1606, related to education personnel, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 472a, 2001, 2002, 2008 of this title.

§ 2012. Education personnel

(a) In general

(1) Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, relating to classification, pay, and leave, respectively, and the sections of such title relating to the appointment, promotion, and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (n) of this section).

(2) Paragraph (1) shall take effect 1 year after November 1, 1978.

(b) Regulations

Not later than the effective date of subsection (a)(2) of this section, the Secretary shall prescribe regulations to carry out this section. Such regulations shall govern—

- (1) the establishment of education positions,
- (2) the establishment of qualifications for educators,
- (3) the fixing of basic compensation for educators and education positions,
- (4) the appointment of educators,
- (5) the discharge of educators,
- (6) the entitlement of educators to compensation,
- (7) the payment of compensation to educators,
- (8) the conditions of employment of educators,
- (9) the length of the school year applicable to education positions described in subsection (n)(1)(A) of this section,
- (10) the leave system for educators, and
- (11) such other matters as may be appropriate.

(c) Qualifications of educators

(1) In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

(A)(i) that lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies; and

(ii) that a list of qualified and interviewed applicants for education positions be maintained in the Office from among individuals who have applied at the national level for an education position and who have expressed interest in working in an education position anywhere in the United States;

(B) that a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2) of this section, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (d)(2)(A) of this section, a determination by a school board that such a person be hired shall be followed by the supervisor; and

(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level that such individual's name appear on the national list maintained pursuant to paragraph (1)(A)(ii) or that such individual has applied at the national level for an education position.

(2) The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to do so would result in that position remaining vacant.

(d) Hiring of educators

(1) In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i) that educators employed in a school (other than the supervisor of the school) shall be hired by the supervisor of the school unless there are no qualified applicants available, in which case the vacant position shall be filled at the national level from the list maintained pursuant to subsection (c)(1)(A)(ii) of this section;

(ii) each school supervisor shall be hired by the education line officer of the agency office of the Bureau in which the school is located; and

(iii) educators employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office;

(B) that before an individual is employed in an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted, and that subject to paragraph (2), a determination by the

school board that such individual should or should not be so employed shall be followed by the supervisor (or with respect to the position of supervisor, by the agency superintendent for education); and

(C) that before an individual may be employed in an education position at the agency level, the appropriate agency school board shall be consulted, and that, subject to paragraph (3), a determination by such school board that such individual should or should not be employed shall be followed by the agency superintendent for education.

(2)(A) The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board. The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(B) The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(3) The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identi-

fying the reasons for overturning such determination.

(4) Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau. If such individual is employed at the local level, such individual's name shall immediately be forwarded to the Secretary, who shall, as soon as possible but in no event in more than 30 days, ascertain the accuracy of the statement made by such individual pursuant to the first sentence of this paragraph. If the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged. If the individual had applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of 90 days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) of this section to the position to which such individual was appointed.

(5) Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards, authority over, or control of, educators.

(e) Discharge and conditions of employment of educators

(1) In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons therefore and opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) educators employed in Bureau schools shall be notified 60 days prior to the end of the school year whether their employment contract will be renewed for the following year.

(2) The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the local school board for the school of such action. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the education line officer of the appropriate agency office of the Bureau. Upon such an appeal, the agency education line officer may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) Each local school board for a Bureau school shall have the right—

(A) to recommend to the supervisor of such school that an educator employed in the school be discharged; and

(B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

(f) Indian preferences

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, if such a waiver is in writing deemed to be a necessity by the tribal organization, except that this paragraph shall in no way relieve the Bureau of the Bureau's responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).

(2) For purposes of this subsection, the term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(B) in connection with any personnel action referred to in this subsection, any local school board as defined in section 2026 of this title, and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(3) The term "Indian preference laws" means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions, except that such term shall not be considered to include section 450e(b) of this title.

(g) Applicability of chapter 51 of title 5

Subject to the authority of the Office of Personnel Management to determine finally the applicability of chapter 51 of title 5 to specific positions and employees in the executive branch, the Secretary shall determine in accordance with subsection (a)(1) of this section the applicability or inapplicability of such chapter to positions and employees in the Bureau.

(h) Compensation or annual salary

(1)(A) Except as otherwise provided in this section, the Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5 is applicable or on the basis of the Federal Wage System schedule in effect for the locality.

(B) By not later than October 28, 1988, the Secretary shall establish, for contracts for the 1991-1992 academic year, and thereafter, the rates of basic compensation, or annual salary rates, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rates of basic compensation applicable (on the date of enact-

ment of such amendments¹ and thereafter) to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.], unless the Secretary establishes such rates within such 6-month period through collective bargaining with the appropriate union representative of the education employees that is recognized by the Bureau.

(C) By not later than October 28, 1988, the Secretary shall establish the rates of basic compensation or annual salary rates for the positions of teachers and counselors (including dormitory and home-living counselors)—

(i) for contracts for the 1989-1990 academic year, at rates which reflect $\frac{1}{3}$ of the changes in the rates applicable to such positions on April 28, 1988, that must be made to conform the rates to the rates established under subparagraph (B) for such positions for contracts for the 1991-1992 academic year, and

(ii) for contracts for the 1990-1991 academic year, at rates which reflect $\frac{2}{3}$ of such changes.

(D) The establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not preclude the use of regulations and procedures used by the Bureau before April 28, 1988, in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of the educator.

(E)(i) Except as provided in clause (ii), the establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make the election under paragraph (2) of subsection (c) of this section.

(ii) Any individual described in clause (i) may, during the 5-year period beginning on the date on which the Secretary establishes rates of basic compensation and annual salary rates under subparagraph (B), make an irrevocable election to have the basic compensation rate or annual salary rate of such individual determined in accordance with this paragraph.

(iii) If an individual makes the election described in clause (ii), such election shall not affect the application to the individual of the same retirement system and leave system that applies to the individual during the fiscal year preceding the fiscal year in which such election is made, except that the individual must use leave accrued during a contract period by the end of that contract period.

(F) The President shall include with the budget submitted under section 1105 of title 31 for each of the fiscal years 1990, 1991, and 1992 a written statement by the Secretary which specifies—

(i) the amount of funds the Secretary needs to pay basic compensation and the annual salaries of educators for such fiscal year, and

(ii) the amount of funds the Secretary estimates would be needed to pay basic compensa-

¹ See References in Text note below.

tion and the annual salaries of educators for such fiscal year if the amendments made to this paragraph by the Indian Education Amendments of 1988² had not been enacted.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 percent of the rate of basic compensation to which such educator is entitled.

(3)(A) The Secretary may pay a postdifferential not to exceed 25 percent of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(B)(i) Upon the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide 1 or more post differentials under subparagraph (A) unless the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that certain of the requested post differentials should be disapproved or decreased because there is no disparity of compensation for the involved employees or positions in the Bureau school, as compared with the nearest public school, that is either—

(I) at least 5 percent, or

(II) less than 5 percent and affects the recruitment or retention of employees at the school.

(ii) The request under clause (i) shall be deemed granted as requested at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time the request is approved, approved with modification, or disapproved by the Secretary.

(iii) The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential authorized by reason of this subparagraph at the beginning of a school year after either—

(I) the local school board requests that such differential be discontinued or decreased, or

(II) the Secretary or the supervisor determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

(i) Annual and sick leave

Any individual—

(1) who on November 1, 1978, is holding a position which is determined under subsection (f) of this section to be an education position and who elects under subsection (o)(2) of this section to be covered under the provisions of this section, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia and is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to an education position,

shall be credited for the purpose of the leave system provided under regulations prescribed

pursuant to subsection (b)(10) of this section, with the annual and sick leave to such individual's credit immediately before the effective date of such election, transfer, promotion, or reappointment.

(j) Liquidation of remaining leave upon termination

Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, except that leave earned or accrued under regulations prescribed pursuant to subsection (b)(10) of this section shall not be so liquidated.

(k) Transfer of remaining leave upon transfer, promotion, or reemployment

In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations prescribed pursuant to subsection (b)(10) of this section shall be transferred to such person's credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Office of Personnel Management.

(l) Ineligibility for employment of voluntarily terminated educators

An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(m) Dual compensation

In the case of any educator employed in an education position described in subsection (n)(1)(A) of this section who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in section 5533 of title 5, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for any such receipt of additional compensation.

(n) Definitions

For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's de-

² See References in Text note below.

gree in education from an accredited institution of higher education;

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(iv) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position for agency superintendent for education.

(2) The term “educator” means an individual whose services are required, or who is employed, in an education position.

(o) Covered individuals; election

(1) Subsections (a) through (n) of this section apply to an educator hired after November 1, 1979 (and to an educator who elected application under paragraph (2)) and to the position in which such individual is employed. Subject to paragraph (2), the enactment of this Act shall not affect the continued employment of an individual employed on October 31, 1979 in an education position, or such individual’s right to receive the compensation attached to such position.

(2) Any individual employed in an education position on October 31, 1979, may, not later than November 1, 1983, make an irrevocable election to be covered under the provisions of subsections (a) through (n) of this section.

(p) Furlough without consent

(1) An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under paragraph (2) of subsection (o) at that time, and who did not make the election under paragraph (2) of subsection (o), may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5) without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

(A) the supervisor, with the approval of the local school board (or of the education line officer upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 2010(b) of this title, and

(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue 1 or more educators in pay status if—

(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

(ii) such educators are selected based upon such educator’s qualifications, after public

notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

(2) The supervisor of a Bureau school may appeal to the appropriate agency education line officer any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, approve the determination of the supervisor. The educational line officer shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.

(Pub. L. 95-561, title XI, § 1132, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4002; amended Pub. L. 105-362, title VIII, § 801(c)(3), Nov. 10, 1998, 112 Stat. 3288.)

REFERENCES IN TEXT

The effective date of subsection (a)(2) of this section, referred to in subsec. (b), probably means the effective date specified in subsec. (a)(2) of this section.

The General Schedule, referred to in subsec. (h)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

The date of enactment of such amendments, referred to in subsec. (h)(1)(B), probably means the date of enactment of the Indian Education Amendments of 1988 which is part A of title V of Pub. L. 100-297 and was approved Apr. 28, 1988. Prior to the general amendment of this chapter by Pub. L. 103-382, section 2011(h)(1)(B) of this title contained similar language referring to the date of enactment of such amendments after a reference to the Indian Education Amendments of 1988.

The Defense Department Overseas Teachers Pay and Personnel Practices Act, referred to in subsec. (h)(1)(B), is Pub. L. 86-91, July 17, 1959, 73 Stat. 213, as amended, which is classified generally to chapter 25 (§ 901 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 901 of Title 20 and Tables.

The amendments made to this paragraph by the Indian Education Amendments of 1988, referred to in subsec. (h)(1)(F)(ii), probably means the amendments made to former section 2011(h)(1) of this title by Pub. L. 100-297, § 5114(a), which amended subpar. (A) and added subpars. (B) to (F). Prior to the general amendment of this chapter by Pub. L. 103-382, title I, § 381, Oct. 20, 1994, 108 Stat. 3979, former section 2011(h)(1) of this title, as amended by Pub. L. 100-297, contained provisions similar to those in subsec. (h)(1) of this section.

This Act, referred to in subsec. (o)(1), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

CODIFICATION

In subsecs. (a)(2) and (i)(1), “November 1, 1978” substituted for “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 95-561, which enacted this chapter.

PRIOR PROVISIONS

A prior section 2012, Pub. L. 95-561, title XI, § 1132, Nov. 1, 1978, 92 Stat. 2326; Pub. L. 96-46, § 2(b)(9), Aug. 6,

1979, 93 Stat. 341; Pub. L. 98-511, title V, §508, Oct. 19, 1984, 98 Stat. 2397, related to establishment of a computerized management information system, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

1998—Subsec. (h)(3)(B)(iv). Pub. L. 105-362 struck out cl. (iv) which read as follows: “On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and grants of authority under this subparagraph during the previous fiscal year and listing the positions contracted under those grants of authority.”

ADJUSTMENTS TO RATES OF BASIC COMPENSATION OR ANNUAL SALARY RATES FOR EDUCATION POSITIONS

Pub. L. 104-208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193, provided in part: “That in fiscal year 1997 and thereafter, notwithstanding the provisions of 25 U.S.C. 2012(h)(1)(A) and (B), upon the recommendation of either (i) a local school board and school supervisor for an education position in a Bureau of Indian Affairs operated school, or (ii) an Agency school board and education line officer for an Agency education position, the Secretary shall establish adjustments to the rates of basic compensation or annual salary rates established under 25 U.S.C. 2012(h)(1)(A) and (B) for education positions at the school or the Agency, at a level not less than that for comparable positions in the nearest public school district, and the adjustment shall be deemed to be a change to basic pay and shall not be subject to collective bargaining: *Provided further*, That any reduction to rates of basic compensation or annual salary rates below the rates established under 25 U.S.C. 2012(h)(1)(A) and (B) shall apply only to educators appointed after June 30, 1997, and shall not affect the right of an individual employed on June 30, 1997, in an education position, to receive the compensation attached to such position under 25 U.S.C. 2012(h)(1)(A) and (B) so long as the individual remains in the same position at the same school”.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-134, title I, §101(c) [title I], Apr. 26, 1996, 110 Stat. 1321-156, 1321-171; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105-83, title I, Nov. 14, 1997, 111 Stat. 1555, provided in part: “That beginning in fiscal year 1998 and thereafter and notwithstanding 25 U.S.C. 2012(h)(1)(B), when the rates of basic compensation for teachers and counselors at Bureau-operated schools are established at the rates of basic compensation applicable to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.], such rates shall become effective with the start of the next academic year following the issuance of the Department of Defense salary schedule and shall not be effected retroactively”.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2022 of this title.

§ 2013. Management information system

The Secretary shall establish within the Office, within 1 year after October 19, 1984, a computerized management information system, which shall provide information to the Office. Such information shall include—

- (1) student enrollment;

- (2) curriculum;
- (3) staff;
- (4) facilities;
- (5) community demographics;
- (6) student assessment information; and
- (7) information on the administrative and program costs attributable to each Bureau program, divided into discreet elements.

(Pub. L. 95-561, title XI, §1133, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010.)

PRIOR PROVISIONS

A prior section 2013, Pub. L. 95-561, title XI, §1133, Nov. 1, 1978, 92 Stat. 2327, related to Bureau education policies, practices, and procedures, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2014. Bureau education policies

Within 180 days of November 1, 1978, the Secretary shall develop, publish in the Federal Register, and submit to all agency and area offices of the Bureau, all tribal governments, and the appropriate committees of the Congress, a draft set of education policies, procedures, and practices for education-related action of the Bureau. The Secretary shall, within 1 year of November 1, 1978, provide that such uniform policies, procedures, and practices shall be finalized and promulgated. Thereafter, such policies, procedures, and practices and their periodic revisions, shall serve as the foundation for future Bureau actions in education.

(Pub. L. 95-561, title XI, §1134, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010.)

CODIFICATION

“November 1, 1978”, substituted in text for “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 95-561, which enacted this chapter.

PRIOR PROVISIONS

A prior section 2014, Pub. L. 95-561, title XI, §1134, Nov. 1, 1978, 92 Stat. 2327, related to uniform education procedures and practices by Bureau divisions, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2015. Uniform education procedures and practices

The Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall report such practices and procedures to the Congress.

(Pub. L. 95-561, title XI, §1135, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010.)

PRIOR PROVISIONS

A prior section 2015, Pub. L. 95-561, title XI, §1135, Nov. 1, 1978, 92 Stat. 2327, related to recruitment policy for Indian educators and promotion plan for Bureau employees, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2016. Recruitment of Indian educators

The Secretary shall institute a policy for the recruitment of qualified Indian educators and a

detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

(Pub. L. 95-561, title XI, §1136, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010.)

PRIOR PROVISIONS

A prior section 2016, Pub. L. 95-561, title XI, §1136, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 97-375, title II, §208(b), Dec. 21, 1982, 96 Stat. 1825; Pub. L. 98-511, title V, §509, Oct. 19, 1984, 98 Stat. 2397; Pub. L. 99-89, §7, Aug. 15, 1985, 99 Stat. 383, related to annual reports to Congressional committees and audits, prior to the general amendment of this chapter by Pub. L. 103-382.

A prior section 2016a, Pub. L. 100-297, title VI, §6210, Apr. 28, 1988, 102 Stat. 427, directed Assistant Secretary of the Interior for Bureau of Indian Affairs to submit to appropriate committees of Congress, the President, and the Secretary by September 30 of every other year a report on education of Indian children, prior to repeal by Pub. L. 100-427, §27, Sept. 9, 1988, 102 Stat. 1614.

§ 2017. Biennial report

(a) The Secretary shall submit to each appropriate committee of the Congress a detailed biennial report on the state of education within the Bureau and any problems encountered in the field of education during the 2-year period covered by the report. Such report shall contain suggestions for improving the Bureau educational system and increasing local Indian control of such system. Such report shall also include the current status of tribally controlled community colleges. The annual budget submission for the Bureau's education programs shall, among other things, include—

(1) information on the funds provided previously private schools under section 458d of this title and recommendations with respect to the future use of such funds;

(2) the needs and costs of operation and maintenance of tribally controlled community colleges eligible for assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and recommendations with respect to meeting such needs and costs; and

(3) the plans required by sections 2001(g), 2002(c), and 2005(b),¹ of this title.

(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of each Bureau school at least once in every three years. Audits of Bureau schools shall be based upon the extent to which such school has complied with its local financial plan under section 2010² of this title.

(Pub. L. 95-561, title XI, §1137, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011; amended Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 105-362, title VIII, §801(c)(4), Nov. 10, 1998, 112 Stat. 3288.)

REFERENCES IN TEXT

The Tribally Controlled College or University Assistance Act of 1978, referred to in subsec. (a)(2), is Pub. L.

¹ So in original. The comma probably should not appear.

² See References in Text note below.

95-471, Oct. 17, 1978, 92 Stat. 1325, as amended, which is classified principally to chapter 20 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 2005(b) of this title, referred to in subsec. (a)(3), was omitted from the Code.

Section 2010 of this title, referred to in subsec. (b), was in the original "section 1129", meaning section 1129 of Pub. L. 95-561, which is classified to section 2009 of this title, and was translated as reading "section 1130" to reflect the probable intent of Congress, because section 2010, not section 2009, contains provisions relating to local financial plans.

PRIOR PROVISIONS

A prior section 2017, Pub. L. 95-561, title XI, §1137, Nov. 1, 1978, 92 Stat. 2327, related to constitutional and civil rights of Indian children attending Bureau schools, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

1998—Pub. L. 105-362, §801(c)(4)(A), substituted "Biennial report" for "Annual report" in section catchline.

Subsec. (a). Pub. L. 105-362, §801(c)(4)(B), in first sentence, substituted "biennial report" for "annual report" and "during the 2-year period covered by the report" for "during the year".

Subsec. (a)(2). Pub. L. 105-244 substituted "Tribally Controlled College or University Assistance Act of 1978" for "Tribally Controlled Community College Assistance Act of 1978".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

§ 2018. Rights of Indian students

Within six months of November 1, 1978, the Secretary shall prescribe such rules and regulations as are necessary to ensure the constitutional and civil rights of Indian students attending Bureau schools, including such students' right to privacy under the laws of the United States, such students' right to freedom of religion and expression and such students' right to due process in connection with disciplinary actions, suspensions, and expulsions.

(Pub. L. 95-561, title XI, §1138, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011.)

CODIFICATION

"November 1, 1978" substituted in text for "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 95-561, which enacted this chapter.

PRIOR PROVISIONS

A prior section 2018, Pub. L. 95-561, title XI, §1138, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 98-511, title V, §510, Oct. 19, 1984, 98 Stat. 2397, related to regulations implementing administrative provisions, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2019. Repealed. Pub. L. 105-362, title VIII, § 801(c)(5), Nov. 10, 1998, 112 Stat. 3288

Section, Pub. L. 95-561, title XI, §1139, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011, related to promulgation of regulations.

A prior section 2019, Pub. L. 95-561, title XI, §1139, Nov. 1, 1978, 92 Stat. 2328; Pub. L. 100-297, title V, §5117,

Apr. 28, 1988, 102 Stat. 382; Pub. L. 100-427, §1(c)(1), (2), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101-301, §5(a), May 24, 1990, 104 Stat. 207, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2020. Voluntary services

Notwithstanding section 1342 of title 31, the Secretary may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools. Nothing in this chapter shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5 and chapter 171 of title 28.

(Pub. L. 95-561, title XI, §1140, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XI (§§1101-1152) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2020, Pub. L. 95-561, title XI, §1140, as added Pub. L. 98-511, title V, §511, Oct. 19, 1984, 98 Stat. 2397; amended Pub. L. 99-89, §8, Aug. 15, 1985, 99 Stat. 383, contained identical provisions relating to voluntary services, prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2021. Proration of pay

(a) Election of employee

Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school year over the entire 12-month period. Each educator employed for the academic school year shall annually elect to be paid on a 12-month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

(b) Change of election

During the course of such year the employee may change election once.

(c) Lump sum payment

That portion of the employee's pay which would be paid between academic school years may be paid in lump sum at the election of the employee.

(d) “Educator” and “Education position” defined

For the purposes of this section the terms “educator” and “education position” have the meaning contained in paragraphs (1) and (2) of section 2012(n) of this title. This section applies to those individuals employed under the provisions of section 2012 of this title or title 5.

(Pub. L. 95-561, title XI, §1141, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012.)

REFERENCES IN TEXT

The laws relating to dual compensation, referred to in subsec. (a), are classified generally to section 5531 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2021, Pub. L. 95-561, title XI, §1140A, formerly §1141, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398; renumbered §1140A and amended Pub. L. 99-89, §9(a)(1), (b), Aug. 15, 1985, 99 Stat. 383, contained similar provisions relating to proration of pay, prior to the general amendment of this chapter by Pub. L. 103-382.

A prior section 1141 of Pub. L. 95-561 was classified to section 2022a of this title prior to the general amendment of this chapter by Pub. L. 103-382.

§ 2022. Extracurricular activities

(a) Stipend

Notwithstanding any other provision of law, the Secretary may provide, for each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off. Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

(b) Election not to receive stipend

If an employee elects not to be compensated through the stipend established by this section, the appropriate provisions of title 5 shall apply.

(c) Coverage of Bureau employees

This section applies to all Bureau employees, whether employed under section 2012 of this title or title 5.

(Pub. L. 95-561, title XI, §1142, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012.)

PRIOR PROVISIONS

Prior sections 2022 to 2022b were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2022, Pub. L. 95-561, title XI, §1140B, formerly §1142, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398; renumbered §1140B, and amended Pub. L. 99-89, §9(a)(1), (c), Aug. 15, 1985, 99 Stat. 383, contained similar provisions relating to extracurricular activities.

Section 2022a, Pub. L. 95-561, title XI, §1141, as added Pub. L. 100-297, title V, §5116(2), Apr. 28, 1988, 102 Stat. 381, related to early childhood development program.

Section 2022b, Pub. L. 95-561, title XI, §1142, as added Pub. L. 100-297, title V, §5119, Apr. 28, 1988, 102 Stat. 383, related to tribal departments of education.

§ 2023. Early childhood development program

(a) In general

The Secretary shall provide grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

(b) Amount of grant

(1) The total amount of the grants provided under subsection (a) of this section with respect to each tribe, tribal organization, or consortium

of tribes or tribal organizations for each fiscal year shall be equal to the amount which bears the same relationship to the total amount appropriated under the authority of subsection (g) of this section for such fiscal year (less amounts provided under subsection (f) of this section) as—

(A) the total number of children under 6 years of age who are members of—

- (i) such tribe,
- (ii) the tribe that authorized such tribal organization, or
- (iii) any tribe that—
 - (I) is a member of such consortium, or
 - (II) authorizes any tribal organization that is a member of such consortium, bears to

(B) the total number of all children under 6 years of age who are members of any tribe that—

- (i) is eligible to receive funds under subsection (a) of this section,
- (ii) is a member of a consortium that is eligible to receive such funds, or
- (iii) authorizes a tribal organization that is eligible to receive such funds.

(2) No grant may be provided under subsection (a) of this section—

(A) to any tribe that has less than 500 members,

(B) to any tribal organization which is authorized—

- (i) by only 1 tribe that has less than 500 members, or
- (ii) by 1 or more tribes that have a combined total membership of less than 500 members, or

(C) to any consortium composed of tribes, or tribal organizations authorized by tribes, that have a combined total tribal membership of less than 500 members.

(c) Application

(1) A grant may be provided under subsection (a) of this section to a tribe, tribal organization, or consortia of tribes and tribal organizations only if the tribe, organization or consortia submits to the Secretary an application for the grant at such time and in such form as the Secretary shall prescribe.

(2) Applications submitted under paragraph (1) shall set forth the early childhood development program that the applicant desires to operate.

(d) Functions of programs

The early childhood development programs that are funded by grants provided under subsection (a) of this section—

(1) shall coordinate existing programs and may provide services that meet identified needs of parents and children under 6 years of age which are not being met by existing programs, including—

- (A) prenatal care,
- (B) nutrition education,
- (C) health education and screening,
- (D) family literacy services,
- (E) educational testing, and
- (F) other educational services,

(2) may include instruction in the language, art, and culture of the tribe, and

(3) shall provide for periodic assessment of the program.

(e) Coordination with other programs

Family literacy programs operated under this section, and other family literacy programs operated by the Bureau of Indian Affairs, shall be coordinated with family literacy programs for American Indian children under part B of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6361 et seq.] in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving American Indians.

(f) Administrative costs

The Secretary shall, out of funds appropriated under the authority of subsection (g) of this section, include in the grants provided under subsection (a) of this section amounts for administrative costs incurred by the tribe or tribal organization in establishing and maintaining the early childhood development program.

(g) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

(Pub. L. 95-561, title XI, § 1143, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012; amended Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (e), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Part B of title I of the Act is classified generally to part B (§ 6361 et seq.) of subchapter I of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2023, Pub. L. 95-561, title XI, § 1143, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398, related to employee housing, rental rates, and waiver of rentals during non-session periods and non-pay status, prior to repeal by Pub. L. 99-89, § 9(a)(2), Aug. 15, 1985, 99 Stat. 383.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)(1)], in introductory provisions, substituted “(g)” for “(f)” and “(f)” for “(e)”.

Subsec. (d)(1)(D) to (F). Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)(2)], added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e). Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)(5)], added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)(3)], substituted “(g) of this section,” for “(f) of this section.”

Subsecs. (f), (g). Pub. L. 106-554, § 1(a)(4) [div. B, title XVI, § 1607(a)(4)], redesignated subsecs. (e) and (f) as (f) and (g), respectively.

§ 2024. Tribal departments of education

(a) In general

Subject to the availability of appropriations, the Secretary shall provide grants and technical

assistance to tribes for the development and operation of tribal departments of education for the purpose of planning and coordinating all educational programs of the tribe.

(b) Grants

Grants provided under this section shall—

(1) be based on applications from the governing body of the tribe,

(2) reflect factors such as geographic and population diversity,

(3) facilitate tribal control in all matters relating to the education of Indian children on Indian reservations and on former Indian reservations in Oklahoma,

(4) provide for the development of coordinated educational programs on Indian reservations (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with all educational programs receiving financial support from State agencies, other Federal agencies, or private entities,

(5) provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs, and

(6) otherwise comply with regulations for grants under section 450h(a) of this title that are in effect on the date application for such grants are made.

(c) Priorities

(1) In approving and funding applications for grants under this section, the Secretary shall give priority to any application that—

(A) includes assurances from the majority of Bureau funded schools located within the boundaries of the reservation of the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools, including the submission to each applicable agency of a unified application for funding for all of such schools which provides that—

(i) no administrative costs other than those attributable to the individual programs of such schools will be associated with the unified application, and

(ii) the distribution of all funds received under the unified application will be equal to the amount of funds provided by the applicable agency to which each of such schools is entitled under law,

(B) includes assurances from the tribal governing body that the tribal department of education funded under this section will administer all contracts or grants (except those covered by the other provisions of this chapter and the Tribally Controlled College or University Assistance Act of 1978 [25 U.S.C. 1801 et seq.]) for education programs administered by the tribe and will coordinate all of the programs to the greatest extent possible,

(C) includes assurances for the monitoring and auditing by or through the tribal depart-

ment of education of all education programs for which funds are provided by contract or grant to ensure that the programs meet the requirements of law, and

(D) provides a plan and schedule for—

(i) the assumption over the term of the grant by the tribal department of education of all assets and functions of the Bureau agency office associated with the tribe, insofar as those responsibilities relate to education, and

(ii) the termination by the Bureau of such operations and office at the time of such assumption,

except that when mutually agreeable between the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(2) Subject to the availability of appropriated funds, grants provided under this section shall be provided for a period of 3 years and the grant may, if performance by the grantee is satisfactory to the Secretary, be renewed for additional 3-year terms.

(d) Terms, conditions, or requirements

The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(e) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

(Pub. L. 95-561, title XI, § 1144, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4013; amended Pub. L. 105-244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1)(B), was in the original “this title”, meaning title XI (§§ 1101-1152) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

The Tribally Controlled College or University Assistance Act of 1978, referred to in subsec. (c)(1)(B), is Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325, as amended, which is classified principally to chapter 20 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1998—Subsec. (c)(1)(B). Pub. L. 105-244 substituted “Tribally Controlled College or University Assistance Act of 1978” for “Tribally Controlled Community College Assistance Act of 1978”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 7835.

§ 2025. Payments

(a)(1)¹ Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in 2 payments—

(A) one payment to be made not later than July 15 of each year in an amount equal to one-half of the amount which the grantee was entitled to receive during the preceding academic year, and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than December 1 of each year.

(2) For any school for which no payment was made from Bureau funds in the preceding academic year, full payment of the amount computed for the first academic year of eligibility under this chapter shall be made not later than December 1 of the academic year.

(3) With regard to funds for grantees that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to grantees not later than December 1 of the fiscal year.

(4) The provisions of chapter 39 of title 31 shall apply to the payments required to be made by paragraphs (1), (2), and (3) of this subsection.

(Pub. L. 95-561, title XI, §1145, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015.)

§ 2026. Definitions

For the purpose of this chapter, unless otherwise specified—

(1) the term “agency school board” means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Secretary in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties;

(2) the term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior;

(3) the term “Bureau funded school” means—

(A) a Bureau school;

(B) a contract school; or

(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.];

(4) the term “Bureau school” means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(5) the term “contract or grant school” means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 450f, 450h(a), or 458d of this title) or under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2504) [25 U.S.C. 2501 et seq.];

(6) the term “education line officer” means education personnel under the supervision of

the Director, whether located in central, area, or agency offices;

(7) the term “family literacy services” has the meaning given such term in section 8801 of title 20;

(8) the term “financial plan” means a plan of services to be provided by each Bureau school;

(9) the term “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes;

(10) the term “local educational agency” means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

(11) the term “local school board”, when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected, and the number of such members shall be determined by the Secretary in consultation with the affected tribes;

(12) the term “Office” means the Office of Indian Education Programs within the Bureau;

(13) the term “Secretary” means the Secretary of the Interior;

(14) the term “supervisor” means the individual in the position of ultimate authority at a Bureau school; and

(15) the term “tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 95-561, title XI, §1146, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in pars. (3)(C) and (5), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (15), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

¹ So in original. No subsec. (b) has been enacted.

AMENDMENTS

2000—Pars. (7) to (15). Pub. L. 106-554 added par. (7) and redesignated former pars. (7) to (14) as (8) to (15), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2012 of this title; title 2 section 812; title 20 sections 2326, 6235.

CHAPTER 23—DEVELOPMENT OF TRIBAL MINERAL RESOURCES

- Sec.
2101. Definitions.
2102. Minerals Agreements.
 (a) Authorization for tribes; approval by Secretary.
 (b) Inclusion of individual holdings; approval by parties and Secretary.
2103. Secretary's determination on Minerals Agreements.
 (a) Time; enforcement.
 (b) Factors for consideration; extent of required study.
 (c) Prior notice of proposed finding; privileged information.
 (d) Delegation; final action; appeal; burden on Secretary.
 (e) Nonliability of United States; continuing obligations.
2104. Secretary's review of prior Minerals Agreements.
 (a) Time; criteria; notice of modifications; time for compliance; effect of noncompliance.
 (b) Review before promulgation of regulations; not Federal action.
2105. Effect of other provisions.
2106. Assistance to tribes or individuals during Minerals Agreement negotiations.
2107. Regulations; consultation with Indian organizations; pending agreements.
2108. Tribal right to develop mineral resources.

§ 2101. Definitions

For the purposes of this chapter, the term—

(1) “Indian” means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) “Indian tribe” means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; and

(3) “Secretary” means the Secretary of the Interior.

(Pub. L. 97-382, § 2, Dec. 22, 1982, 96 Stat. 1938.)

SHORT TITLE

Section 1 of Pub. L. 97-382 provided: “That this Act [enacting this chapter] may be cited as the ‘Indian Mineral Development Act of 1982.’”

§ 2102. Minerals Agreements**(a) Authorization for tribes; approval by Secretary**

Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may

enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a “Minerals Agreement”) providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as “mineral resources”) in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

(b) Inclusion of individual holdings; approval by parties and Secretary

Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal Minerals Agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

(Pub. L. 97-382, § 3, Dec. 22, 1982, 96 Stat. 1938.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2107 of this title.

§ 2103. Secretary's determination on Minerals Agreements**(a) Time; enforcement**

The Secretary shall approve or disapprove any Minerals Agreement submitted to him for approval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 4332(2)(C) of title 42 or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28.

(b) Factors for consideration; extent of required study

In approving or disapproving a Minerals Agreement, the Secretary shall determine if it is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement: *Provided*, That the Secretary shall not be required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a Minerals Agreement apart from that which may be required under section 4332(2)(C) of title 42.

(c) Prior notice of proposed finding; privileged information

Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial